IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6381 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

RAVJIBHAI MOHANBHAI GOHEL

Versus

ASSTT. COMMISSIONER OF LABOUR

Appearance:

1. Special Civil Application No. 6381 of 1994

MR MUKESH H RATHOD for Petitioner No. 1

MR NIRDOSH H RATHOD for Petitioner No. 1

MR SP HASURKAR AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 18/10/2004

ORAL JUDGEMENT

1. This petition, exclusively under Article 227 of the Constitution, seeks to challenge the order dated 15.7.1993 of the Conciliation Officer refusing to refer

the industrial dispute sought to be raised by the petitioner. It appears from the impugned order at Annexure-A that the petitioner had demanded reinstatement with full backwages by an application dated 18.8.1992 and, upon issuance of notice by the Assistant Commissioner of Labour, he himself had never attended the proceedings and hence the application was filed on 15.10.1992. Thereafter, the petitioner appears to have sought to revive the demand and, during the course of such proceedings, it was observed on the basis of the documents produced by the employer that the petitioner had resigned from service on 7.3.1989 and accepted the amounts of provident fund and gratuity after some time. For the period of three years thereafter, the petitioner did not appear to have made any grievance and, after such length of time, contended that the resignation was forcefully taken from the petitioner. Disbelieving such allegation of the petitioner, the Assistant Commissioner of Labour held that it was a clear case of resignation and not a case of discharge or dismissal and hence he did not have the power to make reference of such dispute.

2. The learned counsel for the petitioner vehemently argued that the Conciliation Officer did not have the jurisdiction to examine the claim of the petitioner on merits and his only function was to examine existence of an industrial dispute which could have been referred to the appropriate authority under the provisions of the Industrial Disputes Act, 1947 (for short, "the Act"). He further submitted that the contention of the resignation being not voluntary had to be taken at its face value and, despite lapse of three years, the dispute had survived. As for the explanation for the delay of three years in making the grievance, the learned counsel fairly conceded that a criminal complaint was lodged by the employer against the petitioner and the petitioner had waited till disposal of the criminal case of misappropriation involving the petitioner.

3. Having regard to the above facts and circumstances, it is clear that the contentions in the demand of the petitioner were frivolous and did not merit a reference after the delay of three years without any satisfactory explanation therefor. Therefore, even if the impugned order refusing to refer the dispute were based on the consideration which was not germane to the issue, the Court would not be inclined to exercise its extraordinary jurisdiction to interfere with an order which is otherwise sustainable in law. The petition is, therefore, rejected and Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)